United States Court of Appeals

for the Second Circuit

APPENDIX

75-4060

United States Court of Appeals

For the Second Circuit
Docket No. 75-4060

B
P/A

SEMION BRONSZTEJN,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Petition for Review of Order by the
Board of Immigration Appeals

JOINT APPENDIX

Edith Lowenstein
Attorney for Petitioner
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New York, N.Y. 10036

Paul J. Curran
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Southern District of New York
Attorney for Respondent

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Attorney
Of Counsel

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Respectfully submitted,

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United States Attorney for the
Southern District of New York,
Attorney for Respondent.

MARY P. MAGUIRE
Special Assistant United
States Attorney,
Of Counsel.

Decision of Board of Immigration Appeals

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
Washington, D.C. 20530

INC. DEC.

Nov. 26, 1974

File: A13 880 397 – New York

In re: SEMION BRONSZTEJN

IN DEPORTATION PROCEEDINGS

APPEAL

On Behalf of Respondent: Edith Lowenstein, Esquire
36 West 44th Street
New York, New York 10036

On Behalf of I&N Service: Paul C. Vincent
Appellate Trial Attorney

ORAL ARGUMENT: January 30, 1974

CHARGES:

Order: Section 241(a)(11), I&N Act (8 U.S.C. 1251 (a)(11)) – Illicit possession of marijuana (sections 220.05 and 110, New York Penal Law)

Lodged: Section 241(a)(11), I&N Act (8 U.S.C. 1251 (a)(11)) – Attempted criminal possession of marijuana (sections 110 and 220.05, New York Penal Law)

APPLICATION: Termination

Decision of Board of Immigration Appeals

This is an appeal from an order of an immigration judge finding the respondent deportable on the lodged charge, and directing his deportation to Israel. The appeal will be dismissed.

The respondent is a 23-year-old male alien, a native of the Union of Soviet Socialist Republics, last a citizen of Poland, who was admitted to the United States for permanent residence in 1964. The respondent was arraigned on August 5, 1971 and charged with violating sections 220.20 and 220.10 of the New York Penal Law. On December 13, 1971, in the Criminal Court, City, County and State of New York, the respondent was convicted upon a plea of guilty for attempted possession of marijuana pursuant to sections 110 and 220.05 of the New York Penal Law. It was on the basis of this conviction that he was found deportable under the provisions of section 241(a)(11) of the Immigration and Nationality Act. He designated Israel as the country of deportation.

On appeal counsel argues (1) that there was insufficient evidence to support the charge on which the respondent was convicted, and that the conviction was the result of plea bargaining; (2) that conviction under section 110 of the New York Penal Law, attempted criminal possession of marijuana in the sixth degree, is not within the ambit of section 241(a)(11) of the Act. Counsel requests that if the Board finds the respondent deportable, it remand the case for consideration of the respondent's eligibility for the privilege of voluntary departure.

Insofar as the question whether there was sufficient evidence to support the charge under section 110 of the New York Penal Law is concerned, the short answer is that we are bound by the criminal record, and that we may not go behind it and review the evidence and render an independent judgment on the guilt or innocence of the alien involved, *U.S. ex rel. Zaffarano* v. *Corsi*, 63 F.2d 757 (2 Cir. 1933); *Rassano* v. *INS*, 377 F.2d 971, 974 (7 Cir. 1966)[1]; *Cruz-Sanchez* v. *INS*, 438 F.2d 1087 (7 Cir.

1. Remanded on other grounds.

1971). If the respondent wishes to attack the validity of his conviction, he must do so in the criminal courts. Moreover, under the very terms of section 241(a)(11) of the Act, no distinction is made between a misdemeanor and a felony.

Section 110 of the New York Penal Law defines attempt as follows:

> ". . . A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime."

An attempt to commit a crime has been judicially defined as an act done with intent to commit and tending but failing to effect its commission. It does not reach the stage of attempt, unless it carries the project forward within dangerous proximity to the criminal end sought, *People* v. *Sullivan*, 173 N.Y. 122, 65 N.E. 989 (1903); *People* v. *Sobieskoda*, 235 N.Y. 411, 139 N.E. 558 (1923); *People* v. *Werblow*, 241 N.Y. 55, 148 N.E. 786 (1925); *People* v. *Ditchik*, 288 N.Y. 95, 41 N.E. 2d 905 (1942). The attempt must have gone so far that the crime would have been completed but for an extraneous intervention, *People* v. *Rizzo*, 246 U.S. 334, 158 N.E. 888 (1927). It takes its character and its quality from the nature of the law toward whose violation it is or was directed and in this particular instance it was the intended crime of possession of narcotics. Under New York Penal Law an attempt to possess marijuana is a lesser degree of the crime of possession of narcotics. The Immigration and Nationality Act makes no distinction whatever between a conviction for a felony or a conviction for a misdemeanor.

We have held repeatedly that a person who is found deportable if convicted of a substantive offense would be deportable if convicted of an attempt to commit that offense, *U.S. ex rel. Meyer* v. *Day*, 54 F.2d 336 (2 Cir. 1931). See also: *Matter of De S—*, 1 I&N Dec. 553 (BIA 1943), involving an attempt to smuggle; *Matter of E—*, 1 I&N Dec. 505 (BIA 1943), involving attempted compulsory prostitution of women; *Matter of B—*,

1 I&N Dec. 47 (BIA 1941), involving attempted fraud; *Matter of S—*, 3 I&N Dec. 617 (BIA 1949), involving attempted arson; *Matter of V—*, 4 I&N Dec. 100 (BIA 1950), involving attempted bribery.

In enacting the Narcotic Control Act of 1956 (Act of July 18, 1956, 70 Stat. 567, 575), Congress added language to section 241(a)(11) of the Act for the purpose of making a conviction relating to illicit possession of narcotics a ground of deportation. As amended, the provisions of section 241(a)(11) of the Act direct the deportation of an alien "who has been convicted of, or conspiracy to violate any law or regulation relating to the illicit possession of narcotic drugs or marijuana."

The words "relating to" have been construed to be the controlling phrase in section 241(a)(11) of the Act, *Matter of M—*, 6 I&N Dec. 560 (A.G. 1955). The courts have construed the phrase to have broad coverage, *Bowles* v. *Ohio Fuel Gas Co.*, 65 F. Supp. 426 (N.D. Ohio, 1946), aff'd 158 F.2d 814 (6 Cir. 1947); *Commonwealth* v. *Mathues,* 210 Pa. 372, 407, 59 A. 961, 975 (1904). Deportability based on a conviction for attempted possession of marijuana in violation of Louisiana Revised Statutes 14:27-40:962 was upheld in *United States* v. *Rosenson,* 291 F. Supp. 874 (E.D. La. 1968), aff'd *United States* v. *Rosenson,* 417 F.2d 629 (5 Cir. 1969), cert. denied 397 U.S. 962. See also: *Simpson* v. *United States,* 195 F.2d 721 (9 Cir. 1952); *People* v. *Siu,* 126 Cal. App.2d 41, 271 P.2d 575 (1954); *State* v. *Broadnax,* 216 La. 1003, 45 So.2d 604 (1950); *Cruzado-Gomez,* Interim Decision 2252 (BIA December 18, 1973).

For the foregoing reasons, we conclude (1) that the respondent has been convicted of a narcotic violation within the meaning of the immigration laws and is deportable pursuant to section 244(a)(11) of the Act; and (2) that deportability has been established by evidence that is clear, convincing and unequivocal.

Counsel's request that we remand the case for consideration of the respondent's eligibility for the privilege of voluntary de-

parture is denied. There is no provision in the immigration laws that would permit the respondent any form of discretionary relief from deportation. Accordingly, and in view of the foregoing, we will affirm the immigration judge's order and dismiss the appeal.

ORDER: The appeal is dismissed.

s/ Warren R. Torrington

Acting Chairman

Transcript of Oral Argument Before Board of Immigration Appeals

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: Jan. 30, 1974

In re: SEMION BRONSZTEJN

File: A-13880397

Board: Mr. Roberts, Mrs. McConnaughey and Mr. Maniatis

Heard: For Respondent: Edith Lowenstein, Attorney
36 West 44th St.
New York, New York 10036

For Immigration Service:
Paul C. Vincent,
Appellate Trial Attorney

Request: Termination

Attorney:

This is the case of a permanent resident alien who was found deportable by the special inquiry officer or Immigration Judge, for having committed "attempted possession of marijuana in the 7th degree." This is considered a conversation piece whenever I go any place, and they ask me when are you going to Washington the next time? and I say I am going to argue the case of attempted possession of marijuana in the 7th degree. And if they are lawyers they say, say it again, and ask me what *is* "attempted possession in the 7th degree?" And I say I don't know, and then they say, what is the "7th degree?" And then I say this is the lowest type of misdemeanor under New York law.

I believe this is a very serious case, but it is mostly serious because it shows the general absurdity of the legal system. Now, there is a little absurdity within the case, because when I filed

my brief on appeal I did ask for 30 minutes oral argument, and that letter went astray, with the result the Board apparently assumed I wouldn't argue the case orally, and the case was distributed for consideration to the Board. And when I came in today, and I looked at the record file, I found that Miss Wilson, whom I highly respect, has already written an opinion in the case; and I am somewhat concerned that the rest of the Board may also have written opinions, but they have not inadvertently attached them to the file.

Chairman:

Let me reassure you; as a matter of fact this little slip which contains Miss Wilson's notation, first of all, should not have been with this, and I don't know how it happened, and I will call this to the attention of whoever is responsible.

Attorney:

I am glad it *was* attached because I hope the other Board Members did not attach theirs.

Chairman:

As long as you have seen this you will notice that at the top there is a date, Nov. 28, 1973, and the initials L.W., indicating that Miss Wilson was the first one to whom this case was assigned for review. She made a note and then the next date appearing here is Nov. 28, 1973, with the initials M.B.M., which represents the initials of Mrs. McConnaughey, who is sitting on my right.

This never reached Mrs. McConnaughey because it was intercepted soon after I received your phone call, so no other Board Member has actually seen Miss Wilson's note. Ordinarily it should not have been here because this case will be decided on the basis of *this* record as amplified by the oral argument here, and even the notes that we *make* are purely tentative, that was no *opinion.*

Transcript of Oral Argument Before
Board of Immigration Appeals

Attorney:

I saw Miss Wilson and told her about it and I said to her I wish you would come in and listen, because I am sure I could convince you of the error of your ways. I am quite sure she has an open mind but on the other hand as the other Members of the Board will probably lean over backwards because of her note on the file, I feel everything is fine. After all sometimes one gains by mistakes.

Chairman:

This was a real goof on somebody's part here and it should not have been here. It will not be considered when the full Board considers your case on its merits.

Attorney:

I am sure that will be the case. Now however, this slip was very instructive to me because it did indicate to me the case had been previously discussed with somebody else also, because she was rejecting somebody else's argument. However, my approach to the case will be completely different. I would like to now go into the case but I wanted to make this statement because I was a little bit distressed at the goofs which have happened in the case.

Respondent in this case was born in a part of Soviet Russia which later on was ceded to Poland. He came to this country as a boy, and is now only 23 years old. When he went to the deportation hearing the special inquiry officer asked him whether he wanted a lawyer, and he said he did not. When I asked him why he didn't want one, he said because he had lost confidence with his criminal case. Like all people who plead guilty he naturally says he was innocent. Now, the record of the hearing I thought was a regrettable kind of a record because despite the fact the special inquiry officer assured respondent that he and the trial attorney would take care of his interests, I do not believe the record adequately presents the side of the alien.

He was not advised that he could contest his deportability, and he was not advised of any other potential remedies which he might have if he were deportable.

Chairman:

What would you have done for him had you been there?

Attorney:

I don't want to go into that now because I *do* want to do something for him now.

Chairman:

I wonder how he was prejudiced by your not being there?

Attorney:

Despite the fact the person of the man is irrelevant and the suffering he will undergo if deported is irrelevant because it is purely a matter of law, I always found that spreading a man on the record as a man is helpful; and having a man be purely stifled who has pled guilty to certain offenses, and then is sort of pushed into the deportation, admits deportability, not pushed by anybody in particular but by circumstances, doesn't put his best foot forward.

I believe that if I had handled the case I would have put a lot of irrelevant stuff into the record, but it might have been helpful in the consideration of the case as a whole. Not having that irrelevant stuff in the record, I feel in a sense, it gives me the possibility to call to the attention of the Board the obvious fact which has been emphasized by the Supreme Court and all the lower courts, at the time they deported somebody, that deportation is the most grievous penalty there is. And therefore if a permanent resident alien who is under deportation, the statute applicable to him should be strictly construed, and by that I mean, I don't mean an ordinary law and in an ordinary way, but using the language of the statute in the narrowest possible way, rather than in a conveniently comprehensive way.

And that is what I urge in this case, and if we come to that, there will be something I have to say on that when I get to it. Now, I am not at the legal argument yet. I would first like to give background of the facts.

Chairman:

You want to bring out the irrelevant facts you could not do at the original hearing?

Attorney:

No I don't want to appeal to the sentiment of the Board, it is not that kind of a case, and I am really too experienced to do that, but there are other aspects of the case which I will bring out, which *are* irrelevant and yet they are relevant. For instance when these hearings started up the order to show cause had a charge on it which was wrong. He was charged with a felony under New York law in the order to show cause, and the special inquiry officer was asking whether he was guilty of this, and he more or less admitted he was; and at this point the trial attorney interrupted and said one moment please, the charge is wrong, we have to amend the order to show cause, and he then amended it. Then the special inquiry officer thereupon addressed himself to the alien and on Page 4 of the record he says: "The paper the government has just given you contains a new allegation, a new claim, and also a new charge of deportability. The difference is very slight in both cases but each item is now a new item in your case in addition to the old item. The government now, in this paper, claims your conviction was for an attempted criminal possession of a dangerous drug, marijuana . . . do you understand what I said?"

And the man said "yes I do." Well, I read the whole thing and I did *not* understand it. First of all I felt that the difference between a felony and misdemeanor is not a slight difference, and therefore to just, well I felt that the special inquiry officer, while he was explaining the order to show cause, was making up his mind as to his deportability in a fashion almost similar to Miss

Wilson making up her mind before I had a chance to talk about the case, and I feel the case *has* been somewhat stacked against the alien in this area.

Chairman:

How is this relevant?

Attorney:

I will come to that, give me time. It *will* be relevant as we go on. I would like to address myself now to the criminal record which is contained in the record file, and which says that the man pled guilty to attempted possession in the 6th degree, which meanwhile has become the 7th degree, because the law has been amended, and one other degree has been put on top, so the present offense is an offense almost rather than a misdemeanor which the man has been convicted of.

Now, in a way, a person who is convicted of possession of marijuana obviously comes within 241(a)(11), absolutely no question on that, but when we now come to the *attempted* possession, there may be a point; and before I go into the legal argument, and that is the irrelevant portion I want to inject into the case, how does a man get convicted of an attempted possession in the 7th degree? What *is* attempted possession? When there is a bunch of marijuana sitting on the other side of the room, and he reaches for it, is that attempted possession?

When he sits in the room on one side and on the other side of the room is the marijuana, is *that* attempted possession? I consider that the words "attempted possession" in themselves are a conceptual impossibility and is strictly a plea-bargaining situation, when you read the case. I quoted the officer's statement which he had in the record of it, I mean that he observed the defendant inside the above premises and he found inside the premises the bags with the marijuana; now if the prosecuting attorney had evidence connecting up this man with the evidence, I don't believe he would have permitted him this kind of plea-

bargaining because it would have been a dead-sure conviction, and no District Attorney ever permits a dead-sure case to get away from him. Obviously there was not enough evidence there to convict of possession, but as you all know, and I regret to say there are *many* criminal lawyers who would not know how to try a case.

I don't know how to try a criminal case either so I don't take them, but there are thousands of criminal lawyers who make a living out of plea-bargaining. I am at present engaged in a struggle to the death with a lawyer who insists on plea-bargaining in every deportation case, and he says to my client, deportation is something different, you can plead guilty; that is how these lawyers make their living. So he told my client to plead guilty to this very low type of offense, misdemeanor of the lowest type, told him what a big deal he was doing, it was real good; and my client was told he didn't need a lawyer in a deportation hearing and he didn't need a lawyer any place, he was home free, and that was that.

Now I believe that attempted possession is a result of plea-bargaining, and you could *never* visualize the effect of an attempted possession which is not plea-bargaining, it is impossible to visualize it. I looked at the law and there is one case which was cited by the special inquiry officer of attempted possession with the intent to sell, that I can see as a possibility. There is an attempt to sell, but attempt of possession, if it was attempt at possession with an attempt to sell, it would not have come under this part of the 1969 New York law. It would have been rather under Section 220.05 or 220.20, which are the ones which really mean business.

Chairman:

Those are substantive offenses?

Attorney:

Possession with intent to sell.

Transcript of Oral Argument Before
Board of Immigration Appeals

Chairman:
What I want to get squared away is this, apparently under New York law there are the substantive offenses broken down into varying degrees. You have told us there are 7 degrees.

Attorney:
No, in the substantive there are more degrees, but I think there are only 3 dealing with possession, 220.05 and 220.20.

Chairman:
Those are the substantive ones?

Attorney: Yes.

Chairman: Attempt is a separate offense?

Attorney:
220.05 is possession. It is a less noxious kind.

Chairman:
That is a substantive offense. Possession is a substantive offense. Now, attempting to . . .

Attorney:
It was rather difficult for me also to get this, because I am not an expert in criminal law, but I tried to get it straight. But then you have 110.05, and if he pleaded guilty to 220.10, it would have been a Class (e) felony and that would have been Class (a) misdemeanor, but because he only pleaded guilty to 220.05, it was a Class (a) misdemeanor, and he then, by pleading guilty to 110.05, committed a Class (b) misdemeanor, which is the *least* misdemeanor you can commit under New York law. (Not certain about foregoing sections as attorney is difficult to understand due to rapidity of speech).

Chairman:
If you don't mind, I am going to press the question I asked you before, that is, how relevant is this question, and the reason

I ask it is this. The Federal statute which we are applying, Section 241(a)(11), refers to certain types of convictions relating to narcotic drugs, some are specified. The statute draws no distinction whatsoever between felony or misdemeanor, or between gradation of a Class (a), (b), (c), and what have you. How does it make any difference under the statute which we are called upon to apply, that your client may have been found guilty of a misdemeanor of a certain grade, rather than a felony? How is that relevant?

Attorney:

I am coming to that. I have to reach back to what I said in the beginning, because of the tremendous consequences of putting it within that section of the statute, the statute must be strictly construed. The statute, 241(a)(11), speaks of violation of any law relating to the illicit possession of or traffic in narcotic drugs. Now it does *not* say to the illicit *attempt* of possession.

Chairman:

It doesn't say felonious or misdemeanor.

Attorney:

I know, but the point is *attempted* possession and possession are two different things under New York law and they are two different things in the context of Section 241(a)(11); and in fact the Board itself has written an opinion which I neglected to mention. I will get into the legal argument, I was going to lead up to it nicely but now I am in the middle of it, you *made* me. The Board wrote an opinion in *Matter of Schunck,* Int. Dec. 2137, a decision in California, where another law says it is unlawful to visit or be in any place or room where narcotics are being unlawfully smoked, or used, with knowledge that such activities are so occurring. And the Board ruled in that case this is *not* a conviction relating to illicit possession.

Well, I think or I feel that the attempted possession fits this situation to a "t". Because there is a man and there is the subject

matter, and there is neither in the conviction nor in the facts of the case anything except the presence of the drug. There is no tie-up between respondent and the drugs except this guilty plea which I believe is a plea-bargaining device, that is why it was relevant for me to go all around the grounds because I wanted to bring that home. That, and because I believe that the law must be strictly construed.

I also believe that you can*not* read it and insert the word "attempted" in front of possession because that would not be a strict construction. At the same time you can look at your own opinion and all the stuff you said in that, and that was not long ago, and you called it to the attention of Congress, the fact that an alien visitor is in any room or place where proscribed activities occur, that does *not* establish he is in illicit possession or trafficking in narcotic drugs or marijuana, or is covered by Section 241(a)(11). And I believe by the same argument this man, – I think the *Schunck* case is a lot more in point than the case which the special inquiry officer used to say that 241(a)(11) applies to him. And that is why I felt that the entire story of plea-bargaining is relevant, because I feel in evaluating what has transpired in this case, and what this is a conviction of, you should keep in mind that in order to say 241(a)(11) applies to this case you have to insert a word into Section 241(a)(11); namely "attempted".

Because it says that if it relates to possession of that drug, it did not say if it relates to *attempted* possession, and that is a completely different crime, because under the New York statute there is a different thing for the one and the other, and when he originally was accused he was accused of a felony, and then the felony was reduced to a misdemeanor and he pled guilty to something else again. And that something else again is not any different from being in the same room because that is exactly in the criminal record what you have in the description of the facts.

Chairman:

Let me ask you this, What would be necessary as a *minimum* to prove a case of attempted possession?

Transcript of Oral Argument Before
Board of Immigration Appeals

Attorney:
I do *not* have the slightest idea. I tried to look. I went through a number of criminal texts and there just aren't any cases.

Chairman: No reported decisions?

Attorney: No, there is one decision but . . .

Chairman:
I am speaking about the criminal cases. In order to convict a man of attempted possession under this New York statute, what would have to be proved at a *minimum*? Let me be more specific. Could a man be convicted of attempted possession by merely showing he was in the same *room* as the drug?

Attorney:
I would say that it would be impossible to convict anybody of attempted possession. The only way to be convicted of that is by plea-bargaining, it is a device to get a guy to say I am guilty when they have no evidence.

Chairman:
I can conceive of a situation where perhaps an indictment might be brought. Suppose for example, a person was bargaining with an undercover agent to buy some narcotics. He never got to the point where he actually got possession because something happened, but he was attempting to.

Attorney:
But the point is, I mean I believe that would be already something more serious, and that is why I say that I really tried very hard, and in fact I asked a friend of mine who likes to do this kind of research, to find me whatever she could find on that. And she went through a number of books and *I* went through a number of books, and we couldn't locate anything, a discussion for instance, we could not locate it, and I looked through several New York texts, there *was* no discussion of attempted possession. It is true it is enumerated under Class (b) or whatever misdemeanor

it is, together with other misdemeanors like giving a false fire alarm. But you can visualize somebody going to a fire-box and giving a false fire alarm, but the only way I can think of an attempted possession is if Mr. Vincent here was holding a bag of marijuana out to me, and I would try to grab it, and somebody comes in and catches me while I am trying. But the facts as described where there was this stuff on the premises, and the man was there on the premises, well I believe that . . .

Chairman:

You equate that with the situation presented in our decision in *Matter of Schunck?*

Attorney:

Not only that but on the facts, yes. But on the law I would say that I equate this case with plea-bargaining and nothing else. I do not believe that if the police or the prosecutor could have convicted him of possession, that they would have permitted him to plea-bargain. This was his own lawyer telling him let's not get into a big trial, you might get convicted, let's just bargain. But I don't want to get myself trapped in the idea that because I can't imagine an actual fact, therefore I can't say this is an invalid plea, otherwise I would have to go to the criminal court to argue that.

All I say is that in order to say that this particular situation is included in 241(a)(11), you have to insert the word "attempted" into that section, and it doesn't read that way. And I say that the law should be strictly construed, and you should not construe it to include "attempted possession" when the law says it only includes "possession."

Chairman:

Let me ask you this. There are other grounds for deportation based upon a criminal conviction, and I think this Board has held that a person who has been convicted of an attempt is deportable or not deportable, depending upon the nature of the

substantive offense. In other words if the substantive offense which was attempted is a crime involving moral turpitude, then I think we have said that a person convicted of an attempt to commit that substantive offense, has been convicted of a crime involving moral turpitude.

I am merely trying to see where our lines of theory lead us. On the other hand if a person would not have been deportable if convicted of the substantive offense, then I would say a fortiori he would not be deportable if convicted of an attempt to commit that offense. I wonder if this is not a relevant approach?

Attorney:

If you gave me an opportunity to *show* the difference, because if a person is to be deported for having committed a crime involving moral turpitude, it is not the degree of the conviction but the character of the moral turpitude which matters. But this has nothing to do with 241(a)(11), it has only to do with moral turpitude. I am absolutely sure "attempted possession" is not a crime involving moral turpitude, so we can't talk about these things. Moral turpitude has to do with the mental attitude of the person who attempts to commit a crime, and therefore whether he was successful or not, it is established that he had the intention of being turpitudinous. In other words you are not being convicted, after all petty larceny is a petty offense and was found to be moral turpitudinous, and a person who has attempted petty larceny therefore also commits a crime involving moral turpitude.

But here we have a completely different situation. This has nothing to do with moral turpitude. This has to do with a text of a statute which says if you are convicted of a crime of possession, you are deportable, and I say that that has to be strictly construed, and you cannot say that because the crime of possession is a deportable offense, therefore the crime of attempted possession is included in the law. And I feel you have made that very clear by your example.

Transcript of Oral Argument Before
Board of Immigration Appeals

Chairman:

Let me give you another example. There was a time I believe when conspiracy to commit one of these narcotic offenses was not a ground for deportation, and the statute was amended specifically to make a conspiracy conviction itself a basis for deportation. Now, do you recall what we held or what the court held with respect to the situation before this statute was amended? At that time did a conviction for a conspiracy to possess narcotic drugs bring about deportation? Or did the court say no, it doesn't come within the literal language?

Attorney:

Probably not, otherwise the law would not be amended.

Chairman:

That doesn't necessarily follow. Sometimes the law may be amended to make more certain that which a court has already held, in other words to codify the court law. I honestly don't remember and that is why I am asking you, but do you think that might be an analogy?

Attorney:

No, I would say if Congress wants to have "attempted" included, they have to amend the law.

Chairman:

You don't think attempt is a crime which could be within the ambit of the statutory language which says "relating to"?

Attorney:

I say that the law of deportation has to be strictly construed, and while it is conceivable that attempt is in the wider sense related, it is not in that narrower sense, and that is why I went into this long story about the subsections, different subsections of criminal law of New York which sets up separate boxes, and each crime is in a different box, and I say that you cannot say because there is the same words in it, that it is related.

I say it is a different crime, and I say that if you strictly construe the statute, then you have to construe it the way you read it, and not the way it might be read according to – I mean because if you used conscience, this case would never be here. I think, I mean it is an absurdity to deport a person, a permanent resident alien for this particular thing. But we are here talking about the seriousness, and it *is* serious, I don't want to belittle it, it is a very serious situation but I do feel the law has to be construed the way it reads, and I hope I have made my point.

Mr. Vincent:

Members of the Board, sandwiched in with all the eloquence of my very charming adversary there was one small phrase at the beginning, when Miss Lowenstein said this is a matter of law. That to me is a truism, and the only relevant statement made by Miss Lowenstein.

Misdemeanor or felony, as you mentioned, Mr. Roberts, are completely immaterial and irrelevant. 4th degree, 5th degree, 6th degree, 7th degree, and I might just say on the side here, I think it is a crime that they have ruined a formerly good penal law in New York by giving us a situation where a person can sit down and try to talk lengthily about "degrees" of a misdemeanor and of a felony the way they laid it out, without further explanation; this is a corollary and excuse me for that. What are the statutes we are about to construe?

Not the "attempt" or substantive statutes in New York; our job is to construe 241(a)(11) of the I&N Act. What does it say? "Ad nauseam," and I say it again. A person who violates a law relating to the illicit possession of marijuana, is deportable, relating to or connected with. Miss Lowenstein said an attempt has nothing to do with the substantive crime. I disagree heartily and completely. We have in every state within the union substantive crimes and a law of attempt. And as you pointed out, Mr. Roberts, under 241(a), turpitudinous crimes, there are quite

a few cases, where the Board has held, and the courts have also held, that an attempt to commit a substantive crime comes within moral turpitude meaning, and also within narcotics.

Now, I submit the argument that an attempt to possess narcotics doesn't come within the ambit of the statute, I think is practically foreclosed by this Board, and I will go back to *Matter of G—*. It is interesting to note two things; first, *Matter of G—* was decided in 1954, and I am sure you Board Members recall, I had to look it up, that in 1954 the statute did not use the word "possession," it was "illicit traffic."

In 1956 the word "possession" was added to the statute, so when we read *Matter of G—* and we take the portion quoted by Miss Lowenstein at Page 7 of her brief, and I quote: "The possession involved herein is not mere possession. It is possession with an intent to dispose of the drug unlawfully. This is sufficient to bring an alien within the provision of 241(a)(11) of the I&N Act." That is a correct quote, and of course it is obvious once we realize "possession" was not contained therein.

Chairman:

But "sale" was, and "possession for the purpose of sale" was within the ambit of the statute as it existed.

Mr. Vincent:

The very next sentence where Miss Lowenstein stopped in her quote, reads, and again I quote from *Matter of G—* 6 I&N Dec. at 354: "It is clear to us (the Board) that one who is in effect convicted of the crime of ***attempting*** to sell narcotics is as deportable as one convicted of the crime of ***selling*** narcotics."

I say that that rationale is on all fours with the crime of possession and attempted possession, the crime of selling and attempt to sell. Now, to get a little closer to the present date, I am coming to a case in March, 1971, this is an unpublished decision but I think it might be helpful. This is the case of *Eduardo*

Martinez-Alvarez, decided March 22, 1971. (Mr. Vincent hands same to Board and Attorney.)

In this case respondent had been convicted of a crime in Louisiana of an attempt to possess marijuana on 3 counts; he entered a guilty plea. One of the rather unique arguments raised by respondent's counsel was that in Louisiana, the same as we have today in New York law, the crime of attempt is in a separate portion of the statute books from the crime of possession of marijuana. They said he was convicted of this crime of attempt, therefore it is not related to the crime of possession of marijuana.

Now this Board waited for the decision of a Federal District Court down in Louisiana, in the case of *U.S.* v. *Rosenson,* reported at 291 F. Supp. 874, in 1958, this is for the Eastern District of Louisiana. The same argument had been raised and the Judge in deciding the case adversely to the defendant in that case, used this language, and I quote from Page 2 of the *Martinez-Alvarez* decision:

". . . the fact the attempt provision is found in a different part of the statute books has no relevance. The relevant inquiry is not to determine where the crime is found in the books but rather to determine what the crime is." Here the crime of which the defendant was convicted, is attempted possession of narcotics. That should answer the question and the Board found it did answer the question, and held that the decision of the Immigration Judge was correct. At that time the special inquiry officer found respondent deportable, and the man *was* within the ambit of 241(a)(11) and therefore deportable.

Chairman:

We were not there confronted with the type of argument we have been presented with in this case though, were we?

Mr. Vincent:

I find very little difference, because if you could find in

1971, agreed you can have an attempt, the type of argument here today I think is almost as unique as saying because the crime is in a different portion of the statute books, that Miss Lowenstein cannot visualize the crime of attempted possession. I would take her back to her lawschool days in criminal law classes, the "snatch and drag at Tiffany's." Break the window down and a hand is reaching in at a beautiful diamond necklace, and just as the hand is closing on it, the arm of the law closes on the shoulder of the hand. The question, was there an attempted grasping of the necklace? And the answer is of course, yes. An attempt by the way to me, is irrelevant *here*, because that is for the court in New York. We have a conviction of record of an attempt to possess marijuana, and the Board cannot go behind that conviction. That is all I have. Thank you.

Chairman:

If I could pursue some of these examples a bit more, counsel has suggested that this respondent could not have been convicted of this charge had there been a trial on the basis of the facts alleged in the criminal record. In other words that he was found in a room where this marijuana *was*.

Mr. Vincent:

If I may answer that, very bluntly that is completely irrelevant. We don't *know* what the facts are. We have not got a *clue*, believe me, just the arresting officer's notation on the record is certainly sufficient to support a guilty plea, we don't know. How did the man get to the building? Whether informants were involved or telephone calls? We don't know. We have no way of knowing.

Chairman: He pled guilty.

Mr. Vincent:

He pled guilty and that is a conviction we have absolutely no way of knowing what the real facts are any more than Miss Lowenstein does.

Transcript of Oral Argument Before Board of Immigration Appeals

Chairman:

I assume your research has not been any more productive than Miss Lowenstein's with respect to cases indicating what must be proved as a *minimum,* to support a guilty finding by a jury?

Mr. Vincent:

I didn't go very far because this is Hornbook law. What constitutes attempt? An attempt is something more than a mere preparation. As I say, and I quote the classic example of a hand reaching for the diamond necklace, the cases in New York are legion on possession per se, but for an attempt there must be some steps taken to accomplish the substance of crime. I still think that is immaterial to us here, we have a *conviction.*

Now, if the conviction is erroneous, the solution is not before this Board, the solution goes back before the court which *took* the conviction in New York City.

Chairman:

I think Miss Lowenstein's thesis is that under the strict rule of construction, that the courts have enjoined us to follow, we must give the deportation statute the narrowest possible interpretation; and I think her suggestion is that since the statute refers to specified conduct which is made criminal, that it should not be construed to include the crime of *attempt,* which is a separate offense, not mentioned in the statute. Do I correctly appraise your argument in that regard, Miss Lowenstein?

Attorney:

Yes, absolutely, and I don't think Mr. Vincent's argument meets my argument.

Chairman:

I am trying to present the issue as you developed it, and he will have an opportunity at least to respond directly.

Mr. Vincent:

Mr. Roberts, I agree with you, I recognize the argument here is that the statute doesn't use the word "attempt," and I say the entire history behind conviction is under attempt even with this Board, under the Immigration statute, 241(a)(4) you have the prime example of it; certainly if there is no more reason to say that a man who attempts to commit the crime of grand larceny, is committing a crime of moral turpitude, since attempt is not in the statute, it is not *in* there, you have to *read* it in, the same as you have to read it in here. I say your reasoning, the Board's reasoning in the Louisiana case that an attempt to do it, and you go back to the word as relating in the statute, if this statute read "convicted" of a crime for the possession, then Miss Lowenstein would have a very valid argument, in my opinion.

But this is the law *relating* to the possession, and I don't see how the minds of man can say that the attempt to possess marijuana, a conviction for that crime, and it *is* a crime, under the statute of New York, doesn't relate to possession of marijuana. The mind boggles, even to put forth the proposition refutes it.

Chairman:

I can see somewhat of a difference, and again I am just trying to draw an analogy. Do you know whether before the statute was amended specifically to encompass a conspiracy conviction, whether a conspiracy conviction did result in deportation under this?

Mr. Vincent: No, I don't know.

Attorney:

If you would like me to brief that, I will be prepared to submit it.

Chairman:

I am sure we can ascertain that too. What I am thinking of is this. The courts have construed this statute in a number of

cases, and they have construed it very narrowly. There was a time, as I recall it, when they threw out a deportation order based on a marijuana conviction because they said that marijuana was not a narcotic drug.

And until the statute was amended to *include* marijuana, marijuana was not included. They also, as I recall it, concluded that narcotic offenses are not crimes involving moral turpitude, but merely regulatory offenses, and if that is so, I am wondering whether the analogy to the attempt cases in the field of crimes involving moral turpitude would be valid in this context?

Mr. Vincent:

I think it is perfectly valid. I fail to follow your reasoning completely. The mere fact the crime of grand larceny, rather of possession, of marijuana, is one not involving moral turpitude, I am not concerned with moral turpitude. The crime of grand larceny *is* a crime of moral turpitude, and the crime of attempt is one of moral turpitude. You read the attempt in there, attempt is not in the statute. You talk about the conviction for crimes involving moral turpitude, not the *attempt* to commit a crime, but the Board and the courts are reading the word "attempt" into 241(a)(4), and the Board has already read it in, in *Matter of G*— and 241(a)(11). It has done so in the unpublished case, and I say it is perfectly logical. I find *no* problem in going behind the reasoning in 241(a)(11).

Chairman:

I notice in the *Martinez* case you referred us to, that respondent was not represented, and I assume there was no judicial review of our decision, because you would have called it to our attention had there been one.

Mr. Vincent:

I would have, there *was* no judicial review. This is all we have on it.

Transcript of Oral Argument Before
Board of Immigration Appeals

Attorney:

I do believe that I have made my point, but I would like to say one more thing, and that is there is no analogy between the crime of involving moral turpitude and the attempt, because the law under 241(a)(4) doesn't say a person who has been convicted of grand larceny has to be deported. It says a person who has been convicted of a crime involving moral turpitude has to be deported. Therefore, there is a finding if grand larceny involves moral turpitude and you find that intent to commit grand larceny also involves moral turpitude, but if the law would say grand larceny is a deportable offense, then the Board would not, rather *could* not say attempted grand larceny is a deportable offense according to my approach. Because I would say it has to be strictly construed, and then you cannot impugn into the statute or inject into it something that is not written there.

Chairman:

We will take this under advisement and you will hear from us in due course.

Attorney: Thank you.

Decision of the Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Aug. 22 1973

File: A13 880 397 – New York

In the Matter of SEMION BRONSZTEJN Respondent	)))	In Deportation Proceedings

CHARGE: I & N Act – Section 241(a)(11) – (8 USC 1251(a)(11),

Convicted of:

(Order to Show Cause) Illicit possession of marijuana (Secs. 220.05 and 110, N.Y. Penal Law

Lodged: Attempted criminal possession of marijuana (Secs. 110 and 220.05, N.Y. Penal Law)

APPLICATION: –

In Behalf of Respondent:	In Behalf of Service:
No one	John P. Ruggiero, Esq. Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

Respondent, now 23, native of the Union of Soviet Socialist Republics, last a citizen of Poland, was admitted to the United States for permanent residence about August 12, 1964. On December 13, 1971 he was convicted in the Criminal Court, City, County and State of New York, under Sections 110 and

220.05 of the New York Penal Law for attempted criminal possession of a dangerous drug in the sixth degree, marijuana.

Both in the Order to Show Cause charge, and that lodged at the deportation hearing respondent is asserted to be deportable under that portion of Section 241(a)(11) of the Immigration and Nationality Act which provides for the expulsion of any alien in the United States:

> ". . . who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana . . ."

Section 220.05 of the New York Penal Law reads:

> "A person is guilty of criminal possession of a dangerous drug in the sixth degree when he knowingly and unlawfully possesses a dangerous drug.
>
> "Criminal possession of a dangerous drug in the sixth degree is a class A misdemeanor."

We are satisfied that when marijuana is involved, conviction under Section 220.05 of the New York Penal Law, regardless of degree, is encompassed by Section 241(a)(11) of the Immigration and Nationality Act.

However, respondent was not convicted for violation of Section 220.05 of the New York Penal Law. Rather, for an attempt to violate that Section he was convicted under Section 110 of the foregoing law.

Respondent nevertheless is deportable on the lodged charge. Section 241(a)(11) of the Immigration and Nationality Act as quoted above speaks of an alien convicted not for possession, but convicted of a law *relating* to possession. "Relating to" is sufficiently broad to include an attempt to unlawfully possess marijuana. (*Matter of G—*, 6 I&N Dec. 353).

Because respondent's conviction was recent he is not eligible

for discretionary relief from deportation. Despite his youth, many years in the United States and family ties here, brothers, sisters and elderly parents, we have no alternative but to require deportation. Respondent designates Israel as his destination.

Upon request of the government we do not now set an alternate destination. The government retains the right to reopen proceedings should it seek naming an alternate country for respondent's destination.

ORDER: IT IS ORDERED that respondent be deported from the United States to Israel on the following charge only: Section 241(a)(11) of the Immigration and Nationality Act in that you have been convicted of a violation of any law or regulation relating to the illicit possession of marijuana: Section 110 of the New York Penal Law, attempted criminal possession of marijuana (Section 220.05, New York Penal Law).

s/ Edward P. Emanuel
Immigration Judge

Transcript of Deportation Hearing

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF
SEMION BRONSZTEJN
Respondent

File A-13 880 397 - New York
In Deportation Proceedings

TRANSCRIPT OF HEARING

Before: EDWARD P. EMANUEL , Immigration Judge.

Date: July 6, 1973

Place: 20 West Broadway, New York, N.Y. 10007

Transcribed by Sylvia Katz; Recorded by Dictabelt

Official Interpreter No one.

Language – English

APPEARANCES:

For the Service:
John P. Ruggiero, Esq.

For the Respondent:
No one.

IMMIGRATION JUDGE TO RESPONDENT:

Q You speak and understand English, don't you?

A Yes.

Q Will you please speak more loudly. I suggest that you move your chair a little closer to these microphones as everything must be recorded through them. If there be anything you do not fully understand let me know immediately and I will then explain those things to you. Do you understand?

A Yes I do.

Q State your name please.

A Semion Bronsztejn.

Q How old are you Mr. Bronsztejn?

A 23.

Q The government claims that you are a deportable alien because of your conviction on December 13, 1971 at New York City in connection with criminal possession of marijuana, that because of that conviction you are now illegally in the United States. Do you understand this charge?

A Yes sir.

Q The purpose of this hearing is to find out whether or not you are deportable and if you are then what must be done in your case. Do you understand?

A Yes I do.

Q You have the right at this hearing to have a lawyer or other authorized representative of your own selection without cost to the government. You are not forced to have such a person, you can go ahead without one and speak for yourself if you prefer. You entered the hearing room without such a person. If you want a chance to get a lawyer or representative we will postpone the hearing a reasonable time to give you a chance to obtain such a person and come back here with that person. Do you understand me this far?

A Yes I do.

Q What will you do about having or not having a lawyer or representative, please?

A I am not taking a lawyer.

Q Are you saying, Mr. Bronsztejn, that you want to go ahead immediately, without a lawyer, without a representative, and speak for yourself, is that what you say?

A Yes.

Q All right we will proceed in that manner and as we do, both the gentleman over here and I want to give you an absolutely fair hearing. If you feel there be anything unfair or wrong at this hearing let me know immediately. Also let me know immediately if you want to say or present anything about this, your immigration case, or want to examine anything used in it. Do you understand?

A Yes I do.

Q Stand up please and raise your right hand to be sworn. Do you solemnly swear that all statements you make in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A I do.

Q You may sit down. Is the information you gave as to your name true?

A Yes it is. When you'll be listening to my trial you will notice that last September I filed an application for a reentry permit.

Q A reentry permit?

A Right. At the time I wanted to go abroad and also – at the time I was trying to get a job as a seaman.

Q Wait a second. Let us do first things first. I know nothing at all about your case. I don't have your file. The government attorney, the gentleman over here, has your file. I am

not allowed to know anything about your case except as they are brought out at this hearing and recorded through these microphones. The only thing I do have now is the original order to show cause which states that the government claims you are deportable. A copy of that has already been given to you. I show it to you and, because it is the first paper, we now use it in your case and call it official paper #1. Do you understand?

A Yes I do.

Q This paper claims that you are not a citizen of the United States. Is it true that you are not a United States citizen, is that true?

A Yes, it's true.

Q Is it also true that you were born in the USSR and are now a citizen of Poland, is that true?

A That's what I wanted to tell you about. I applied in September for a reentry permit because I wanted to get a job as a seaman – I also needed a passport and, of course, since I'm a citizen of Poland I also applied for a Polish passport and I received a letter saying they refused me so I imagine I am no longer citizen of Poland.

Q Were you born in the USSR?

A Yes I was.

Q Were you last a citizen of Poland?

A Yes.

Q And is it true, as the government claims, that you entered the United States here in New York City on August 12, 1964, is that true?

A Yes, it is true.

Q At that time is it true that you were admitted for permanent residence?

A It is true.

Q And on December 13, 1971 were you in the Criminal Court of the City of New York?

A --

MR. RUGGIERO: If I may interject at this time Mr. Emanuel, I would like to amend that by adding the word attempted criminal possession of a dangerous drug both to the allegation 5 and to the charge, because the conviction was not criminal possession but attempted criminal possession, both section of law being 220.05 in conjunction with Section 110 of the New York Penal Law, 110 being attempt.

IMMIGRATION JUDGE: Very well, there is now a recess.

MR. RUGGIERO: Mr. Emanuel I wish to offer in evidence an original of a paper I now serve with the additional corrected charge and corrected allegation. I serve the copy on the respondent here.

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Bronsztejn, the paper the government has just given you contains a new allegation, a new claim, and also a new charge of deportability. The difference is very slight in both cases but each item is now a new item in your case in addition to the old item. The government now, in this paper, claims that your conviction was for an attempted criminal possession of a dangerous drug, marijuana, and that because of that you are deportable as one who was convicted for an attempted illicit possession of marijuana. And in this new paper the government also points out that a section of law under which you were convicted referred to the criminal possession as being in the sixth degree rather than in the fourth degree as stated in official paper #2. Do you understand what I said?

A Yes I do.

Q The original of the paper, copy of which was given you, is now used in your cases and because this is the second paper we will call this official paper #2. Do you understand?

A Yes I do.

Q Because this new paper has been given to you you have the right now to ask for a postponement of your hearing so

that you can prepare a defense again[illegible] new claims and the new charge or for any oth[illegible]ason t[illegible] want. You do not have to, however, ask for [illegible]ponem[illegible]t of the hearing; you can go ahead immediately today. What do you want to do about postponing your hearing?

A I would like to go ahead with the hearing.

Q You want to go ahead with the hearing today?

A Yes.

Q Without any postponement?

A Yes.

Q And without getting any lawyer or representative?

A Yes.

Q All right. Is it true, as now is claimed in item 6 on this paper that you were convicted December 13, 1971 in the Criminal Court, City and County of New York, for attempted criminal possession of a dangerous drug in the sixth degree, namely marijuana?

A Yes it is.

IMMIGRATION JUDGE: Mr. Ruggiero, do you have any kind of verification, corroboration of the conviction?

MR. RUGGIERO: Yes sir.

MR. RUGGIERO TO RESPONDENT:

Q I show you a court record and ask you if this court record relates to you – it refers to Semion Bronsztejn, 110 West 49th Street, New York City?

A West 94th Street.

Q 110 West 94th Street – does that court record relate to you?

A –

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Bronsztejn, you read English O.K., don't you?

A Yes.

Q Will you please look over the documentation just handed you by the government attorney and see whether you are the person referred to in these documents?

A Yes.

Q Are you saying you are the person referred to in these papers?

A Yes.

MR. RUGGIERO: I offer it in evidence.

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Bronsztejn the gentleman over here has asked me that we consider this material also. Do you have any good reason why I should not?

A No I don't.

Q We are using this material calling this official paper #3. Do you understand?

A Yes I do.

MR. RUGGIERO: The government rests.

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Bronsztejn is there anything you wish to say or present in opposition to the claim of the government that you are deportable because of that conviction?

A Well the only reason I could use would be personal reasons. My family is here and both my parents are sick people. My father is sick in the hospital. My parents are very elderly, are sick people. My father was just in the hospital. My parents are very elder people and my father was just in the hospital. And of course I have brothers and sisters here. I would imagine that is probably the only defense I could use in my case.

Q In the event you are deported, sir, you have the right to say to which country you wish to be sent. If deported, to which country do you wish to be sent please?

A Do I have to make my choice now?

Q Yes, or if you would wish a recess in order to think the matter over, I would give you a recess.

A Yes. I would like a recess.

IMMIGRATION JUDGE: Recess.

RESPONDENT: I just wanted to ask you something.

IMMIGRATION JUDGE TO RESPONDENT:

Q Yes, go ahead.

A What if the country that I choose should not want to have me there?

Q If the country that you choose will not allow you to enter that country you will not be sent there, do you understand?

A Yes I do.

Q Understanding that to which country do you want to be sent if deported, please?

A –

Q You hesitate, if you do not name any country Mr. Bronsztejn, then by law I am required to order that you be sent to Poland. However, if you name a country then the United States government would attempt to, in the event you are deported, to have you admitted to the country you name, if that be different from Poland. And then if that country would accept you, you would be there. If that country however does not accept you within the provisions of the law then the government will endeavor to have you sent to Poland. Do you understand that?

A Yes I do.

Q Understanding all of these things to which country would you wish to be sent in the event you are to be deported, please?

A To Israel.

Q In the event you should have to be deported to Poland would you be persecuted there, would you be harmed there, because of your race, your religion or your political opinion?

A I think so.

Q In Israel would you be persecuted, harmed, because of your race, religion or your political opinion?

A I don't think so.

IMMIGRATION JUDGE: Mr. Ruggiero are you asking that in making my decision I name a country as an alternate to Israel – are you asking that I name Poland?

MR. RUGGIERO: Off the record.

IMMIGRATION JUDGE: Off the record.

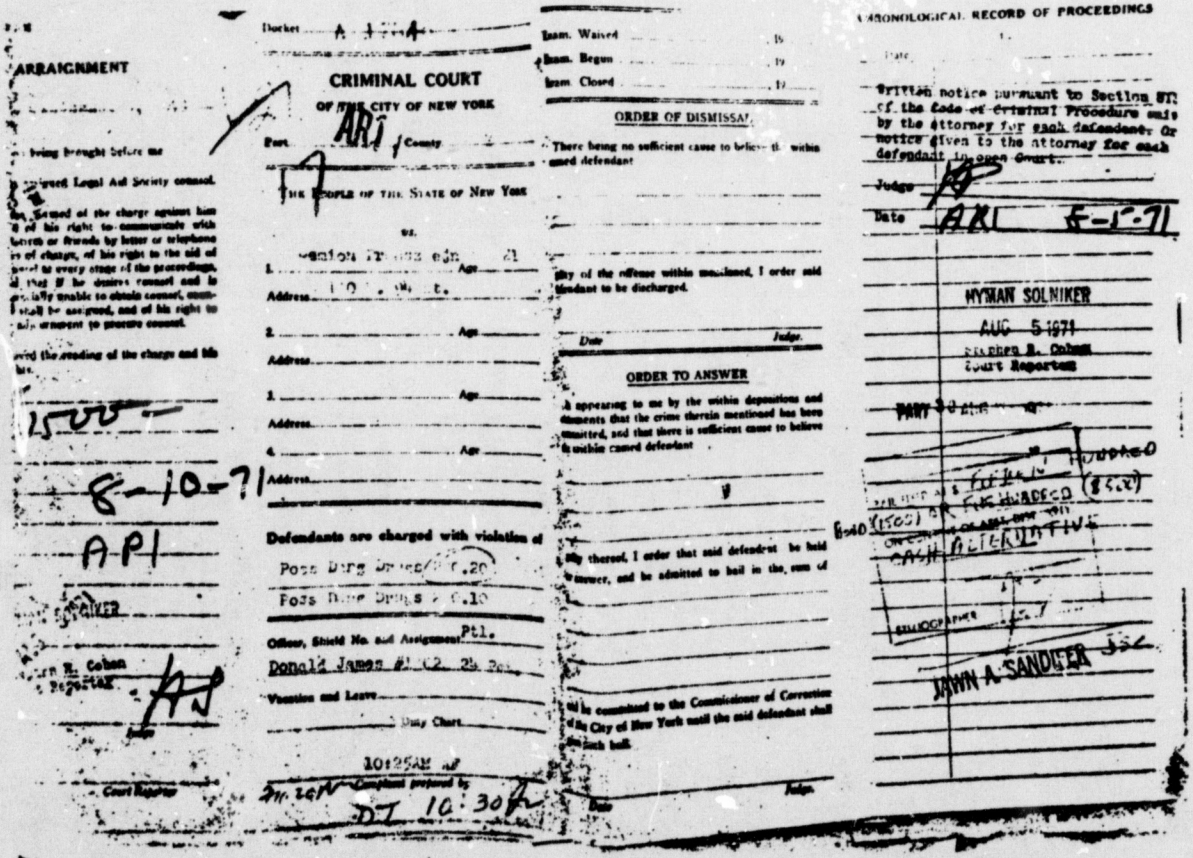
MR. RUGGIERO: At this time we will not request Poland as an alternate. However, we do not do this in the sense that should we wish to designate Poland we wish to retain the right to reopen for that purpose.

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Bronsztejn, is there anything further you want to say or present about this, your immigration case?

A Nothing else.

IMMIGRATION JUDGE: Very well the hearing is closed. I will make my decision later and forward a copy to both you and also to the government attorney, the gentleman over here. Hearing closed.



ARRAIGNMENT

Docket A 1 [illegible] A

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part ARI / County

THE PEOPLE OF THE STATE OF NEW YORK

vs.

[illegible] Age

Address 110 [illegible] St.

2. Age

Address

3. Age

Address

4. Age

Address

Defendants are charged with violation of

Poss Dang Drugs / C.20

Poss Dang Drugs / C.10

Officer, Shield No. and Assignment Ptl.

Donald James #[illegible] 25 Pct.

Vouchers and Leave

Duty Chart

10:25AM

Complaint prepared by

DT 10:30A

Court Reporter

Exam. Waived

Exam. Begun

Exam. Closed

ORDER OF DISMISSAL

There being no sufficient cause to believe the within named defendant

guilty of the offense within mentioned, I order said defendant to be discharged.

Date Judge

ORDER TO ANSWER

It appearing to me by the within depositions and documents that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

guilty thereof, I order that said defendant be held to answer, and be admitted to bail in the sum of

and is committed to the Commissioner of Correction of the City of New York until the said defendant shall be bailed.

Date Judge

CHRONOLOGICAL RECORD OF PROCEEDINGS

Date

Written notice pursuant to Section 671 of the Code of Criminal Procedure waived by the attorney for each defendant. Or notice given to the attorney for each defendant in open Court.

Judge

Date ARI 8-1-71

HYMAN SOLNIKER

AUG 5 1971

Stephen B. Cohen

Court Reporter

JOHN A. SANDIFER

ARRAIGNMENT

AUG 10 1971

[illegible] being brought before the [illegible] assigned Legal Aid Society counsel.

[illegible] advised of the charge against him and of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings, and that if he desires counsel and is financially unable to obtain counsel, counsel shall be assigned, of his right to an adjournment to procure counsel, of his right to a trial in a Part of the Court held by a panel of three judges and, if such trial is refused, of his right to an examination on the charge.

[illegible] the reading of the charge and his rights.

Complaint prepared by

H17346

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part AP1 New York

PEOPLE OF THE STATE OF NEW YORK

vs.

CASH BAIL

1. [illegible] Bronszwjn Age 21M

Address 110 W. 94th St. N.Y.C.

2. Age

Address

3. Age

Address

DEC [illegible] 1971

4. Age

Address

Defendants are charged with violation of

REDUCED TO

220.05

Officer, Shield No. and Assignment 24th Pct.

P.O. [illegible] Jones #13020

Vacation and Leave

Duty Chart

FINE PAID

Date Amount $

Collected by

Finance Book Entry by

Docket Book Entry by

Tried and found GUILTY

Date 19

Date DEC 17 1971 Judge

SENTENCE

Probation

Date

WILLIAM H. LOGUEN

DEC 17 1971

CHRONOLOGICAL RECORD OF PROCEEDINGS

-1-

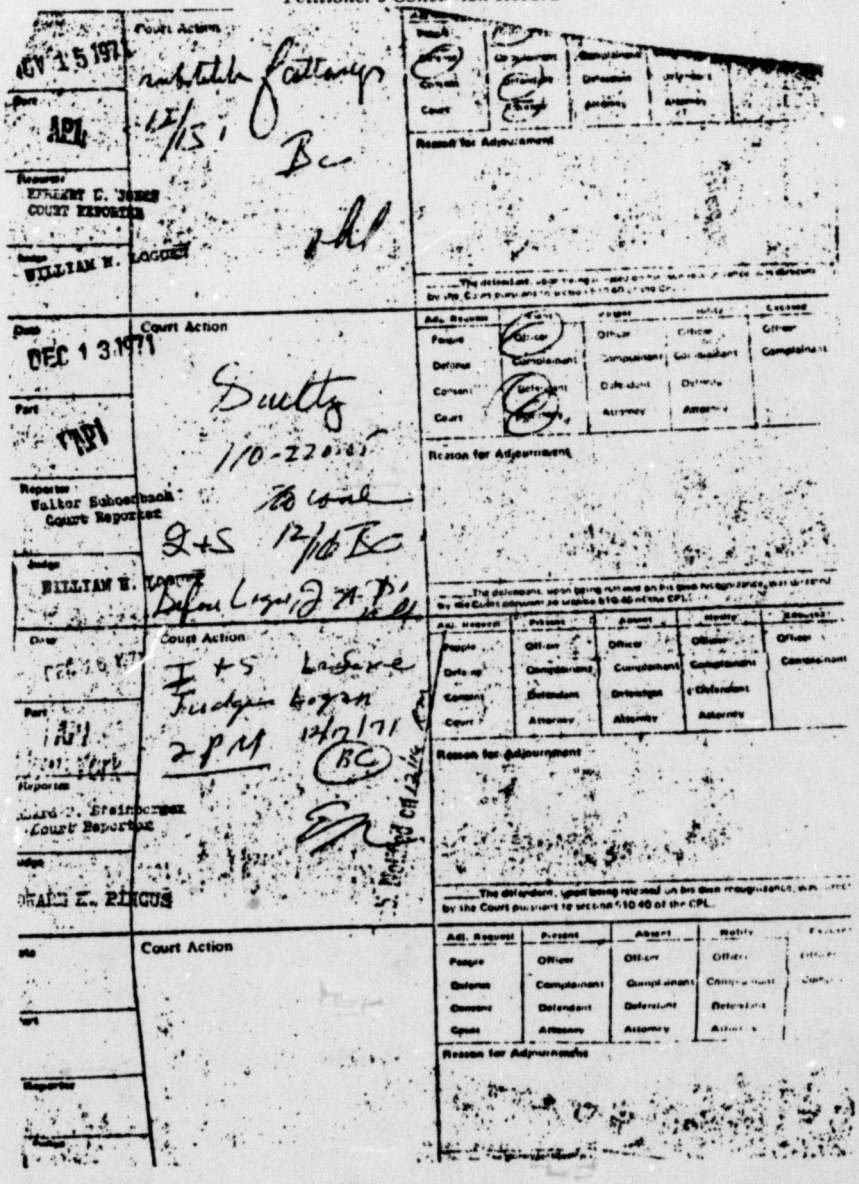
Date

Petitioner's Conviction Record

	Court Action	Request / Present / Absent / Notify / Excused
Sept 1971 — Reporter: COURT REPORTER — Judge	Sept 1971 B.C. Motion	Reason for Adjournment
Date: SEP 8 1971 — Part: AP1 — Reporter: COURT REPORTER — Judge: DENNIS EDWARDS, JR.	9/22/71 BC Consent motion	Reason for Adjournment
Court Reporter: THEODORE LUKEW	Court Action: Motion to suppress hearing continued to Sept 30 — DA requests request to produce medical testimony	Reason for Adjournment
Date: SEP 30 1971 — Part: AP1 — Schoenbach Court Reporter — Judge: FREDERICK B. STRONG	Court Action: SEP 2 1971 AP2 — Oct 27, 1971 — B.C.	Reason for Adjournment
Date — Part: AP2	Court Action: After completing testimony on hearing in support of Deft's motion to suppress is denied. JURY TRIAL REQUESTED 11-15-71	Reason for Adjournment

A 17016

Petitioner's Conviction Record



Order to Show Cause and Notice of Hearing

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

In Deportation Proceedings under Section 242
of the Immigration and Nationality Act

UNITED STATES OF AMERICA:
In the Matter of
BRONSZTEJN, Semion — *File No. A13 880 397*
Respondent.

To:
110 West 94th Street, New York, New York, Apt. 18

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;

2. You are a native of U.S.S.R. and a citizen of Poland;

3. You entered the United States at New York, New York on or about August 12, 1964;

4. You were at that time admitted for permanent residence;

5. You were on December 13, 1971 convicted in Criminal Court of the City of New York, County of New York for criminal possession of a dangerous drug in the 4th degree, to wit, marijuana, in violation of Sec. 220.05 and Sect. 110 New York Penal Law.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a violation of any law or regulation relating to the illicit possession of mari-

juana, in violation of Sec. 220.05 and Section 110 of the New York Penal Law.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 20 W. Broadway, New York, N.Y., 14th floor on July 6, 1973 (R) at 8:45 a.m., and show cause why you should not be deported from the United States on the charge(s) set forth above.

IMMIGRATION AND NATURALIZATION SERVICE

s/ Ben Lambert

Acting District Director, New York District

Dated: April 23, 1973

Ex 1 EPC
7-6-73

Additional Charges of Deportability

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No. A13 880 397

In the Matter of BRONSZTEJN, Semion *Respondent.*	In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

Additional Charges of Deportability

To: Semion Bronsztejn
110 West 94th Street
New York, N.Y., Apt. 18

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a violation of any law or regulation relating to the illicit possession of marijuana in violation of Sections 110 and 220.05, New York Penal Law, attempted criminal possession of dangerous drug to wit: marijuana.

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

6. You were on December 13, 1971 convicted in Criminal Court of the City of New York, County of New York for attempted criminal possession of a dangerous drug in the 6th degree, to wit: marijuana, in violation of Section 110 and Section 220.05 of the New York Penal Law.

July 6, 1973 s/ John P. Ruggiero
Trial Attorney

Ex 2 EPC
7-6-73

ORIGINAL

2 Copies Received

Date July 18, 1975

Firm U.S. Attorney

By Paul J. Cullen

7/18/75